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O'SHEA, GETZ & KOSAKOWSKI, P.C.			WEEKS, GLORIA R	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/734,837

Filing Date: December 12, 2003

Appellant(s): KOZYRSKI, VINCENT T.

Richard D. Getz
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 16, 2006 appealing from the Office action
mailed January 26, 2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,339,983	OKAMURA et al.	7-1982
4,728,237	LORINCZ et al.	3-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless - (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-31 and 37-39 rejected under 35 U.S.C. 102(b) as being anticipated by Okamura et al. (USPN 4,339,983).

In reference to claims 26-31, Okamura et al. discloses a stack (CD; figure 19) of hangers comprising: a plurality of hangers aligned parallel, along a single line, wherein an opening exists between each hanger; each hanger having a shoulder (U) spaced from a web (9), the web (9) extending between a pair of legs (10a, 10b), and a barbed member (15a, 15b) extending out from each leg (10a, 10b); one or more shearable tabs (23) extending between, and attaching, adjacent ones of the plurality of hangers. Regarding claims 37-39, Okamura et al. teaches hangers comprising: a web (9) and a pair of legs (10a, 10b) having a shoulder and extending in a direction perpendicular to the web (9); a barbed member (14a, 14b) extending out from each leg (10a, 10b); and one or more shearable tabs (23) extending between and attaching adjacent fastening elements.

Claim Rejections - 35 USC § 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-31 and 37-39 rejected under 35 U.S.C. 103(a) as being obvious over Lorincz et al. (USPN 4,728,237) in view of Okamura et al. (USPN 4,339,983).

With respect to claims 26-31, Lorincz et al. discloses a hanger (40), used to install framing material, the hanger comprising: a web (41) extending between a pair of legs (42, 43) having a shoulder, in which the legs (42, 43) extend outwardly from the web (41) in a direction perpendicular to the web (41); and a barbed member extending out from each leg (42, 43). Although Lorincz et al. discloses a tab (41b) extending from the web (41) of the hanger (40), Lorincz et al. does not disclose one or more shearable tabs extending between an adjacent hangers. Okamura et al. teaches fastening elements comprising: a web (9) and a pair of legs (10a, 10b) extending in a direction perpendicular to the web (9), and a barbed member (14a, 14b) extending out from each leg (10a, 10b); and one or more shearable tabs (23) extending between and attaching adjacent fastening elements. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the hanger of Lorincz et al. to include the shearable tabs of Okamura et al., since Okamura et al. states in column 6 lines 5-21 that such a modification is known for the purpose of securing a series of elements to one another, thereby allowing the elements to be used in a continuous supply operation.

In reference to claims 37-39, Lorincz et al. discloses a hanger (40), used to install framing material, the hanger comprising: a web (41) extending between a pair of legs (42, 43) having a shoulder, in which the legs (42, 43) extend outwardly from the web (41) in a direction perpendicular to the web (41); and a barbed member extending out from each

leg (42, 43). Although Lorincz et al. discloses a tab (41b) extending from the web (41) of the hanger (40), Lorincz et al. does not disclose one or more shearable tabs extending between an adjacent hangers. Okamura et al. teaches fastening elements comprising: a web (9) and a pair of legs (10a, 10b) extending in a direction perpendicular to the web (9), and a barbed member (14a, 14b) extending out from each leg (10a, 10b); and one or more shearable tabs (23) extending between and attaching adjacent fastening elements. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the hanger of Lorincz et al. to include the shearable tabs of Okamura et al., since Okamura et al. states in column 6 lines 5-21 that such a modification is known for the purpose of securing a series of elements to one another, thereby allowing the elements to be used in a continuous supply operation.

(10) Response to Argument

I. Examiner Interpretation of Independent Claims 26 and 37

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification.¹ Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow.²

Claim 26 states:

¹ *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005); See also MPEP §2111

² *In re Am. Acad. Of Sci. The Ctr.*, 367 F.3d 1359, 1369, 70 USPQd 1827, 1834 (Fed. Cir. 2004); See also MPEP §2111.01.

A stack of hangers for framing material, comprising:

a plurality of hangers, each having a web extending between a pair of legs, which extend outwardly from the web in a direction substantially perpendicular to the web;

a barbed member extending out from each leg; and

one or more shearable tabs extending between, and attaching, adjacent ones of the plurality of hangers.

Claim 37 states:

A stack of hangers for framing material, comprising:

a plurality of hangers, each having a web extending between a pair of legs, which legs extend outwardly from the web in a direction substantially perpendicular to the web;

a barbed member extending out from each leg; and

one or more shearable tabs extending between, and attaching, adjacent ones of the plurality of hangers, wherein the tabs are coplanar with the web.

The preamble of claims 26 and 37 recite a stack of hangers for framing material, which articulates a possible field for “using” a series or assembly of articles, whereby the articles are capable of suspending a structure. Contrary to Applicant’s arguments, the term “hanger” provides no specific structure, rather by definition and broadest reasonable interpretation, merely requires a structure by which an object or garment can hang.

The first structural limitation following the preamble is a web extending between a pair of legs, which can be a planar structure connecting two additional elements which extend perpendicular to the planar structure.

The second structural limitation is a barbed member extending from each leg, which can be a pointed element protruding from each leg.

The third structural limitation is at least one shearable tab attaching adjacent hangers, which can be any structure that connect a first and second “hanger” wherein the structure is formed from a material capable of being cut.

Claim 37 presents an additional limitation of the shearable tabs being coplanar with the web, which requires at least one plane in which both the web and the shearable tabs share.

II. The 35 U.S.C 102(b) rejection of independent claim 26 is proper and should be affirmed.

Applicant’s first argument questions the Okamura patent’s disclosure of a stack of hangers, as Okamura does not express using the stack of devices disclosed as hangers, rather disclosing using the stack of devices of Okamura as fasteners.

It has been held that recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed product from a prior art product satisfying the claimed structural limitations.³

Furthermore, “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

³ *Ex parte Masham*, 2 USPQ2d 1647 (1987).

reference.”⁴ Okamura, as cited above, discloses every structural limitation claimed by Applicant’s invention.

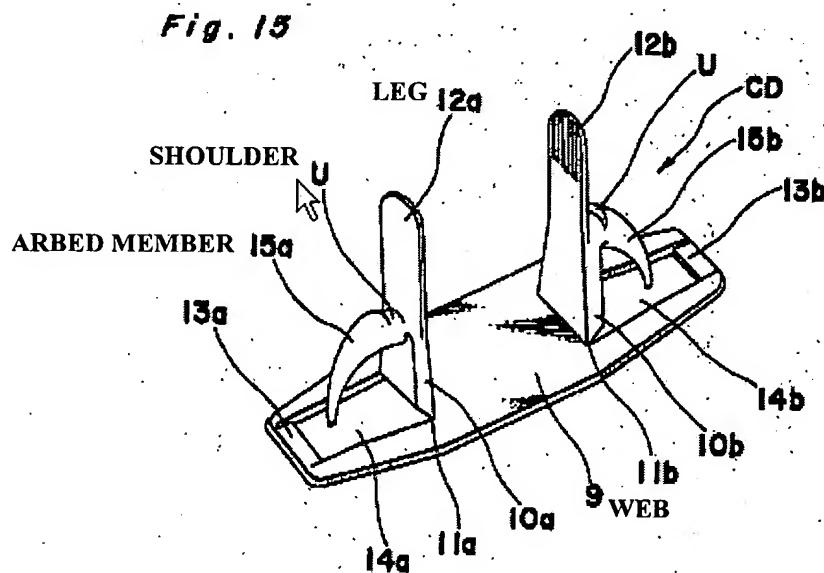
Examiner agrees that the material of a device contributes to its structural limitations, however, as stated in Examiner’s previous response, the plastic device of Okamura is capable of hanging a paper or cardboard framed article. Framing material does not exclude paper or cardboard, or any other lightweight object. In fact, most mats used to decorate pictures are formed from paper-based material. As mats are well known in the art for the purpose of “framing” a chosen piece of art, should one decide to hang the combination of a mat and picture, or display the mat in a store setting as an optional framing accessory, the device of Okamura is capable of being secured/fastened to the mat and subsequently supporting the mat in a hanging fashion. If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim.⁵ Examiner would like to also reference the anticipation rejection affirmed based on Board’s factual finding that the reference dispenser (a spout disclosed as useful for purposes such as dispensing oil from an oil can) would be capable of dispensing popcorn in the manner set forth in appellant’s claim 1 (a dispensing top for dispensing popcorn in a specified manner) and cases cited therein.

III. The 35 U.S.C 102(b) rejection of dependent claim 27 is proper and should be affirmed.

⁴ Verdegaal Bros. V. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); See also §2131.

⁵ See, e.g., In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); See also MPEP § 2112 - § 2112.02

Claim 27 recites the limitation of a shoulder surface spaced from the web, and positioned adjacent the barbed member. Applicant has argued that Okamura fails to disclose such a limitation. Examiner has diagrammed Figure 15 of Okamura below, for the purpose of positively identifying the disclosure of a shoulder spaced from a web and adjacent a barbed member, wherein the barb member extends out from the leg of a device.

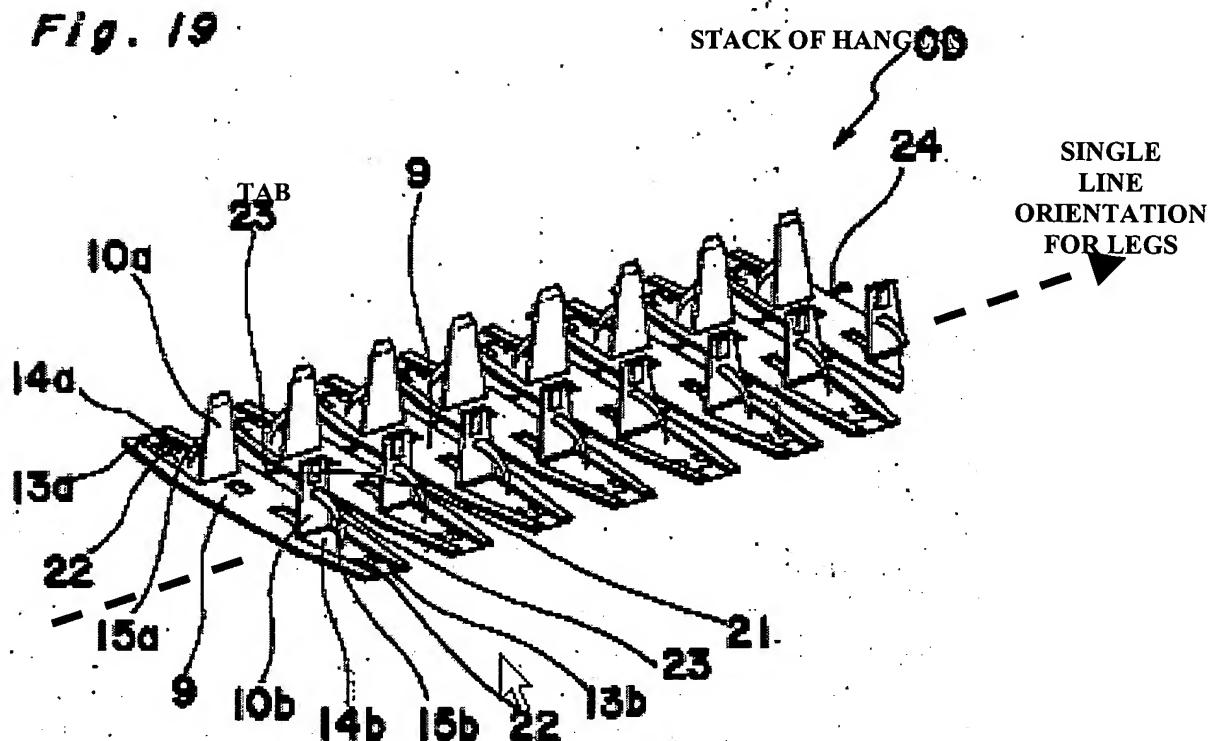


IV. The 35 U.S.C 102(b) rejection of dependent claim 29 is proper and should be affirmed.

Claim 29 introduces the limitation of shearable tabs extending between adjacent hangers within the stack. Examiner has diagrammed Figure 19 of Okamura below, for the purpose of positively identifying the stack of hangers disclosed by Okamura and the tabs that extend between and connect adjunct hangers. Applicant has previously confirmed Okamura's disclosure forming the entire stack of hangers from a flexible material, specifically flexible synthetic resin, which is capable of being sheared.

Column 7 lines 49-51 of Okamura also support Examiner's assertion that the tabs of Okamura are shearable.

Fig. 19



V. The 35 U.S.C 102(b) rejection of dependent claim 30 is proper and should be affirmed.

Claim 30 introduces the limitation of a single line along which the legs of the hangers are oriented. Examiner has diagrammed Figure 19 of Okamura above, for the purpose of positively identifying the single line of orientation illustrated by Okamura, along which the legs of the hangers secured in the stack are positioned.

VI. The 35 U.S.C 102(b) rejection of independent claim 37 is proper and should be affirmed.

With respect to claim 37, Examiner would like to refer back to the remarks provided for claim 26. For the reasons above, Examiner sustains the rejection of claim 37 in view of Okamura.

Regarding the additional limitation of shearable tabs coplanar with the webs of the hangers, Examiner would like to provide the definition of coplanar upon which the interpretation of Okamura was applied. Coplanar is an adjective meaning lying or occurring in the same plane.⁶ Examiner has found the wire-like tabs 23 of Okamura are both horizontally and vertically coplanar with the web 9. The contact surface of the tabs 23 and the web 9 define the common horizontal plane of the elements, while the plurality of contact points between the tabs 23 and the undersurface of the web 9 share a common plane.

VII. The 35 U.S.C 103(a) rejections of claims 26-31 and 37-39 are proper and should be affirmed.

In response to Applicant's argument that Okamura is non-analogous art, it has been held that the determination that a reference is from a nonanalogous art is two fold. First, we decide if the reference is within the field of the inventor's endeavor. If it is not, we proceed to determine whether the reference is reasonably pertinent to the particular problem which the inventor was involved. In this case, Okamura discloses a different use for the common structure provided in Okamura, Lorincz and Applicant's

⁶ American Heritage Dictionary

invention, however, all three entities have a common field of securing means that positively penetrate an element surface.

Appellee is aware that there are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art.⁷ In this instance, column 6 lines 16-21 of Okamura teaches the knowledge of persons of ordinary skill in the art of securing means to attach a continuous supply of devices for the purpose of efficiently feeding the devices in an automatic application. Since column 1 lines 17-21 of Lorincz discloses a desire to automatically feed the disclosed hangers, Examiner finds that sufficient motivation for the combination of Okamura is provided.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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Conferees:

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